IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

PLANNED PARENTHOOD MINNESOTA, NORTH DAKOTA, SOUTH DAKOTA, and CAROL E. BALL, M.D., **Plaintiffs,** **v.** **MIKE ROUNDS, Governor, and LARRY LONG, Attorney General, in their official capacities,** **Defendants.** **ALPHA CENTER, BLACK HILLS CRISIS PREGNANCY CENTER, d/b/a Care Net, DR. GLENN A. RIDDER, M.D., AND ELEANOR D. LARSEN, M.A., L.S.W.A.** **Intervenors.**	**Civil Case No.: 05-4077** **PLAINTIFFS' LR 56.1(B) STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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A. Facts Related to the "Human Being" and "Constitutional Relationship" Disclosures

1. The terms "person" and "human being" are synonyms. *See* Definition Chart setting forth numerous dictionary definitions defining "human being" as a "person," and a "person" as "an individual human being," Branson Declaration Ex. A (All Exhibits are to the Branson Dec.). *See also* Deposition of Stacey Wollman of Black Hills Crisis Pregnancy Center at 45-46 and 110-113 (Ex. B).

2. The term "human being" is a general term, not a medical term or found in a medical dictionary. Deposition of Bruce M. Carlson at 46 to 50 in the matter *Acuna, et. al., v. Turkish, et. al.,* (N.J. Sup. Ct. Middlesex Cty. No. MID-L-3812-98) (Ex. C); Fed. R. Civ. P. Rule 26(A) disclosure of Paul Root Wolpe at ¶ 4 (Ex. D).

3. Several of Defendants' expert witnesses acknowledge that there are or can be moral, philosophical, and religious connotations to the terms "human being" or "person" as commonly used. Kaczor, The Edge of Life, Human Dignity and Contemporary Bioethics (Springer 2005) at 5 (Ex. E); Fed. R. Civ. P. 26(A) disclosure of Ola Saugstad at ¶ 24 (Ex. F); Deposition of Ola Saugstad at 61-63 (Ex. G); Deposition of Bruce Carlson at 63 (Ex. H).

4. There is no consensus among scientists or physicians when human life begins or whether/when an embryo or fetus is a human being, in part because many scientists and physicians believe that science alone cannot resolve a question that is part religious, philosophical, moral etc. *See* the Fed. R. Civ. P. Rule 26(A) disclosures of Dr. Anne Lyerly, (Ex. I); Dr. Paul Root Wolpe, (Ex. D); Dr. Lee Silver, (Ex. J); Amicus Brief of 167 Distinguished Scientists in the matter *Webster v. Reproductive Health Services,* (U.S. No. 88-605), 1988 WL 1127721 (Ex. K).

5. There is substantial scientific/medical opinion that fetuses are neither sentient nor conscious until some time after the gestational age limit for the performance of abortions at Plaintiff's Sioux Falls Clinic. *See* Expert Report of Dr. Anand, offered by the United States in support of Partial-Birth Abortion Act of 2003, pp. 5-9, Saugstad Depo. Ex. 8 (Ex. L); Dr. Saugstad Depo. at 23-31 regarding work of actual experts (Ex. G).

6. The majority of abortions performed in South Dakota in recent years are performed at Planned Parenthood's Sioux Falls Clinic and most of those - over 95% - are performed in the first trimester, but abortions are legally permitted to be performed as late as 14 weeks, 6 days. South Dakota Vital Statistics at Tables 19-20, Looby Deposition Ex. 19 (Ex. M); Plaintiffs' Answer to Interrogatory No. 21 (Ex. N).

7. The presence of chromosomal defects or deviations is among the reasons why a substantial percentage of fertilized human eggs fail to implant and why a substantial percentage of implanted eggs miscarry in the first trimester. Dr. Saugstad Depo. at 40-41 (Ex. G); Dr. Shadigian Depo. at 147-49 (Ex. O).

8. The word "whole," commonly means "free of wound or injury," "free of defect or impairment," "physically sound and healthy," "free of disease or deformity," "mentally or emotionally sound," and "having all its proper parts or components." (Ex. A).

9. The term "whole person" or "whole human being" commonly refers to the totality of different fundamental aspects of humanity, *i.e.* the body, mind and the soul/spirit. *See, e.g.* Deposition of Deborah Gute at 40-42 (Ex. P).

10. Embryos or fetuses up to the gestational age limit for the performance of abortions at Planned Parenthood's Sioux Falls Clinic cannot live separately from the pregnant woman and therefore are not viable. Dr. Saugstad Depo. at 68-69 (Ex. G).

11. The word "separate," when used as an adjective, is commonly defined as "set or kept apart," "not shared with another" "existing by itself," "dissimilar in nature or identity" and "lacking connection." Definition Chart (Ex. A).

12. The word "life" means the condition that distinguishes living beings from dead ones or inanimate objects, but also means the sequence of physical, mental, and spiritual experiences that make up a person's existence. Definition Chart (Ex. A).

13. Intervenor witness "Jane Doe No. 1" testified that she would not understand the "Constitutional Relationship" disclosures without further discussion with her physician. Doe Number 1 Depo at 303-308 (Ex. Q).

B. Facts Regarding Suicide Disclosures

14. Elizabeth Shadigian, M.D., is the State's expert physician witness pertaining to the alleged increased risks of suicide and suicide ideation resulting from abortion. She has substantively admitted that there simply is no increased risk of suicide and suicide ideation from abortion, as that phrase is commonly understood. *See* Shadigian Depo. at 136, ll. 10-13 (Ex. O) (testimony admitting that it is simply "not accurate . . . to advise an elective abortion patient that abortion causes suicide"). (For context, her entire deposition is submitted).

15. Dr. Shadigian admits it would be inappropriate "for a physician to tell a patient considering an abortion that abortion may cause suicide," calling such a disclosure a "poor choice of language" and stating she "wouldn't use that language." *Id.* at 132-33, ll. 21-25, 1-11.

16. It is undisputed that abortion carries with it an increased risk of hemorrhage and that abortion causes hemorrhage in some patients, and Dr. Shadigian agrees that it would "be appropriate for an abortion provider to tell his or her patient that abortion may cause hemorrhage or excessive bleeding." *Id.* at 133, ll. 13-16.

17. With respect to smoking, a comparison Dr. Shadigian introduced, *see id.* at 86, ll. 10-11, the following are true: (1) smoking carries with it an increased risk for lung cancer (CDC Fact Sheet Health Effects of Cigarette Smoking, (Ex. R); (2) smoking causes lung cancer (National Cancer Institute Fact Sheet Cigarette Smoking and Cancer, (Ex. S), and (3) smoking may cause an individual smoker to get lung cancer (*see id*). For over twenty years, cigarette packs have carried the message: "SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer . . ." 15 U.S.C. § 1333(a)(1). (Ex. T).

18. In a study cited by Dr. Shadigian, over a 13-year period Gissler and colleagues in Finland tracked the mortality of all Finnish women who had abortions and all women with live births for a year following each event. *See* Gissler et al., Injury deaths, suicides and homicides associated with pregnancy, Finland 1987-2000, European Journal of Public Health, Vo. 15, No. 5, 459-463 (Ex. U). Although they found that women in the abortion group were 10 times more likely to die as a homicide victim in the first post-event year, 6.15 times more likely to commit suicide in the first post-event year, and 4.41 times more likely to die as a car-accident or other accidental-injury victim in the first post-event year, Gissler has repeatedly stressed that based on these findings "[it]is unlikely that induced abortion itself causes death due to injury[,]" whether due to suicide, homicide or accidental injury. Instead, "it is more likely that induced abortion and deaths due to injury share common risk factors." *Id.* at 461-62.

19. Dr. Shadigian has admitted that a pregnant woman with the risk factors that make her more likely both to have an abortion and die within the first year post-abortion, will have these risk factors[1] even if she does not have an abortion. Shadigian Depo. pp. 89-91, l. 24 – l. 3.

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[1] Dr. Shadigian has confirmed that a risk factor ordinarily refers to something occurring before a procedure that is predisposing, and that the risks of a procedure occur during or after the procedure. Shadigian Depo. p. 85, ll. 11-25.

20. Dr. Shadigian endorses the suggestion that to assess any actual link between maternal death and induced abortion, that one of the variables that should be controlled for is the wantedness of pregnancy, *i.e.* there should be a comparison of women with unwanted pregnancies having an induced abortion with women with unwanted pregnancies not having an abortion. *Id.* at 120, ll.2-14, and 124, ll. 4-11. She confirmed that there has been no such study looking at suicide. *Id.* at 124, ll. 12-17. She has written that "because of the lack of a proper control group . . . it will be hard to inform women as to what, **if any,** additional risk a decision to terminate will produce." (Ex. V, p. 76; emphasis added).

21. Dr. Shadigian admits that she is not aware of even one provider of elective abortion services in the United States who tells his/her patients that an increased risk of suicide is one of the risks associated with elective abortion. Shadigian Depo. p. 48, l. 19 – p. 50, l. 5.

22. The Women's Health Advisor information made available by the University of Michigan Health System (where Dr. Shadigian practices) to patients pertaining to induced abortion identifies possible complications, but does not identify suicide or suicide ideation as a possible complication. Shadigian Depo. p. 50, l. 19- p. 51, l. 23 and Ex. W.

23. The abortion informed consent forms prepared by the Michigan Department of Community Health and mandated for use in Michigan do not include suicide or suicide ideation in the list of risks and complications. (Ex. X).

24. According to the Center for Disease Control, the age-adjusted[2] female suicide rate was 7.5 for every 100,000 women in 1972. *See* Age-Adjusted Rates for 69 Selected Causes By Race and Sex Using 2000 Standard Population: United States, 1968-1978, National

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2 That rate cancels out changes in the overall rate that might be due to a greater concentration of women in the population who have reached a suicide-prone age.

Vital Statistics System, Center for Disease Control/National Center for Health Statistics, p. 40 (Ex. Y). According to CDC, the age-adjusted rate in 2003 (the most recent year on record) was 4.18, meaning that the age-adjusted female suicide rate had dropped slightly more than 44% from 1972-2003. *See* Center for Disease Control, Web-based Injury Statistics Query and Reporting System, website, accessed June 2006. (Ex. Z).

25. In the interim (1973-2002), there were at least 30,000,000 legal abortions in America. *See* CDC Abortion Surveillance 2002, Table 2, p. 18.[3] (Ex. AA).

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3 There is nothing anomalous about 2003. For the period 2000-2003, the age-adjusted female suicide rate was 4.11 per 100,000 women. (Branson Dec. Ex. Z).

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